

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8624 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANABHAI B PARMAR

Versus

AHMEDABAD MUNI.CORPN WORKSHOP

Appearance:

MR YN RAVANI for Petitioner

MR MR ANAND for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/06/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Challenge is made by the petitioner in this Special Civil Application to the order of the Labour Court, Ahmedabad, dated 30th April, 1993, passed in Reference (LCA) No.736 of 1985.

3. The petitioner a Safai Karamchari of the

respondent-Corporation was dismissed from services after holding a departmental inquiry. There were three charges against him. The first charge pertains to his wilful absent from duty for 70 days. The second charge pertains to the misbehaviour with the superior officer and the third charge was of giving threat to the superiors. The petitioner raised an industrial dispute which has been referred to the Labour Court, which came to be dismissed under the order impugned in this Special Civil Application. Hence, this Special Civil Application before this Court.

4. Before the Labour Court, the counsel who was appearing for the petitioner fairly conceded that the inquiry held against him was perfectly legal and proper. The only contention made by the counsel for the petitioner before the Labour Court was that considering the charges which amounted to misconduct, it were not so gross which calls for the order of termination or dismissal and the punishment given in the present case of dismissal is too harsh or absolutely disproportionate to the charges levelled against the workman. This contention of the counsel for the petitioner found favoured with the Labour Court and under the impugned order, the Reference was partly allowed. He was ordered to be reinstated in service with continuity of service. However, he was not granted the backwages. The period of absent was ordered to be treated as earned leave due and if no leave is due then he should be treated as on leave without pay.

5. The counsel for the petitioner contended that the punishment was harsh and disproportionate to the guilt, and as such, the denial of the backwages to the petitioner was wholly unjustified. The learned counsel for the petitioner further contended that in the matter of quantum of punishment, this Court can interfere with the matter and he sought to place reliance on certain decisions of this Court.

6. However, so far as the quantum of punishment is concerned, it is suffice to say that the Labour Court has found it to be excessive and disproportionate and the punishment of dismissal has not been given effect to. The petitioner was ordered to be reinstated back in the service. The controversy really centers to that part of the award where the petitioner has not been awarded the full backwages. In Para No.15 of the award, the Labour Court has given the reasons for not allowing the full backwages to the petitioner. The Labour Court found as a fact that the petitioner has been found to be habitually

remaining absent. There are charges of insubordination and of misbehaviour with the superior officers. The Labour Court held, all these facts should be considered while considering the matter of withholding of the backwages, but at the same time the punishment of dismissal was considered to be not justified.

7. Much emphasis has been put by the counsel for the petitioner on the ground that the backwages have been denied to the petitioner only on the ground that the petitioner may be more careful in duties in future, which as per his contention is not germane to the point in issue. It is true that this reason has been given, but it is not the only reason given for denial of the backwages to the petitioner. This Court cannot be oblivious of the facts that, (1) the petitioner has been dismissed from services on the serious charges of misconduct after holding a full-fledged departmental inquiry, (2) that the inquiry was accepted to be legal and proper, and (3) that the charges of absenteeism, insubordination and misbehaviour were held to be proved by the Inquiry Officer and those charges were not questioned by the petitioner before the Labour Court. The Labour Court has accepted those charges. Taking into consideration the facts and the charges of absenteeism, insubordination and misbehaviour, the Labour Court thought it fit of not awarding the backwages to the petitioner. It is not the case where the petitioner has totally been exonerated of the charges by the Labour Court, but a lenient view has been taken and in exercise of power under sec. 11A of the Industrial Disputes Act, 1947, the reinstatement has been ordered. In view of this fact, merely because the order of reinstatement has been made and no further punishment has been substituted for his dismissal/termination, the petitioner shall not automatically become entitled for the full backwages. It is for the Labour Court to pass appropriate order under sec.11A of the Industrial Disputes Act, 1947 and in a given case where the misconduct was found to be proved and the Labour Court considered the punishment to be harsh, it could have passed the order of denial of backwages. The denial of the backwages may be one of the substituted punishments of the dismissal in such cases. This Court has very limited power of judicial review in the matter of punishment to be given to a delinquent employee for a proved misconduct. Reference in this respect may have to the two decisions of the Supreme Court in the case State Bank of India vs. Samendra Kishore reported in JT 1994 (1) SC 217 and in the case of B.C. Chaturvedi vs. Union of India reported in JT 1995 (8) SC 65. In view of these two later decisions of the

Supreme Court, the earlier decisions of this Court on which reliance has been sought, need not be referred and gone into. Otherwise also, I do not find any illegality in the award. Taking into consideration the charges against the petitioner which were found to be proved, I do not consider it to be a case where any interference is called for in the award made in the present case.

8. The awards passed by the Labour Court or the Industrial Tribunal under the provisions of Industrial Disputes Act, 1947, are not made appealable or revisable to this Court. The Industrial Disputes Act, 1947, is a specific legislation governing the relation between the employers and the workmen. The legislature has, in its wisdom, not provided appeal or revision to this Court against the awards made by the Labour Court or the Industrial Tribunal in the matter of industrial disputes. The object is to give finality to the decision of the Labour Court or the Tribunal, as the case may be. This Court sitting under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes. After going through the contents of the award made in this Special Civil Application, I do not find anything therein where it can be said that it is a case of grave dereliction of duty and abuse of fundamental principles of law or justice by the Labour Court, where grave injustice would be done unless this Court interferes.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-